

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2368 OF 2006

B.C. Panicker,)
residing at 33/40, ' B Wing,)
Laxmi Pooja Apartment, Near Kasturba Hospital,)
Jacob Circle, Mumbai.)...Petitioner

Versus

1. Union of India, through General Manager,)
Western Railway, Headquarters Office,)
Churchgate, Mumbai-400 020)
2. Chief Security Commissioner,)
Western Railway, Headquarters Office,)
Churchgate, Mumbai-400 020)
3. Divisional Security Commissioner,)
Railway Protection Force, Ratlam.)
4. The Director General of R.P.F.,)
Railway Board, Rail Bhavan,)
New Delhi-110 001)..Respondents

Ms. Suchitra Kamble, instructed by Ms. Sonali Humane, for the petitioner.

Mr. Suresh Kumar for the respondents.

**CORAM: SWATANTER KUMAR, C.J. &
S.C. DHARMADHIKARI, J.**

Judgment reserved on : April 16, 2007

Judgment delivered on: April 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

The petitioner was appointed as Constable in the Railway Protection Force on 25th July, 1980 in the pay scale of Rs. 3050-4590. He served for a considerable time whereafter vide medical report dated 16th December, 1997, the doctor observed thus:

“Not to be allow to use fire arm or
do duty with public contract as permanent measure as
evidence of recurrence”

The above medical report, according to the petitioner, was for a limited purpose only and the petitioner acquired B-1 grade in medical fitness. The petitioner was not continued in the post of Constable. However, as an alternative employment, vide order dated 6th August, 1999, the petitioner was given the post of Peon in the pay scale of Rs.2550-3200 by the respondents in Group-D post. Aggrieved by this action of the respondents, the petitioner filed a review application on 25th August, 1999, challenging the decategorisation. This review application was also rejected by the respondents vide order dated 15th March, 2000, at Exhibit-D to the petition. Dissatisfied with this order, the petitioner even filed an appeal before the authorities on 12th April, 2000. This appeal

had not been decided. Whereafter the petitioner served a letter on 26th April, 2006, through his counsel, praying for grant of relief. Vide letter dated 25th May, 2006, the respondents informed the petitioner that the matter was under consideration. It was, however, of no consequence.

2. It is the contention of the petitioner that the action of the respondents in placing the petitioner in the lower pay scale is against the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (hereinafter "the Act"), as well as the judgment of the Supreme Court in the case of *Kunal Singh vs. Union of India*, AIR 2003 SC 1623, and of this Court in the case of *Devaki Nandan vs. Union of India* which stated that if the petitioner was not found suitable for the post of constable, he should have been shifted to other post with the same pay scale and benefits and not to a lower grade. On this premise, the petitioner questions the correctness of the orders dated 6th August, 1999 and 25th May, 2006, in the present writ petition under Article 226 of the Constitution of India.

3. In the reply affidavit, there is really not much dispute to the

facts of the case. However, it is stated that the petition had been filed after a lapse of seven years and thus suffers from the defect of delay and laches. It is not disputed that the petitioner was placed in the lower category with lower pay scale but it is submitted that it did not attract the provisions of the Act or any of the policies of the respondents. According to the respondents, the petitioner was not entitled to claim any review of the order. It is not disputed that the case was under review and could not be finalised and the Rules of posting in the same pay scale after de-categorisation, according to the respondents, did not apply to the Railway Protection Force as per Railway Board's notification dated 3rd January, 2005 and thus the action of the respondents was correct in accordance with law.

4. The petitioner has placed on record Indian Railway Establishment Manual Volume-1 wherein clause 1308 deals with fixation of pay of a disabled and medically decategorised railway servant. It requires that the pay of the disabled/medically decategorised railway servants would be fixed upon absorption in an alternative post at a stage corresponding to the pay previously drawn in the post held by them on regular basis before acquiring

disability/medical decategorization. For running staff, the fixation would be based on the basic pay plus a percentage of their basic pay, representing the pay element of running allowance as may be in force. Under clause 1309, a disabled/medically decategorised Railway servant absorbed in alternative post would for all purposes have his past service treated as continuous with that in the alternative post. If these provisions are applicable to the case of the petitioner, then there is hardly any justification on the part of the respondents to absorb the petitioner in a lower pay scale. As already noticed, according to the respondents, these Rules are not applicable to the Railway Protection Force. If it is so, even in terms of the judgment of the Supreme Court in the case of *Narendra Kumar Chandla vs. State of Haryana and others*, AIR 1995 SC 519, the petitioner's case would have to be examined in the light of the observations of the Court that every endeavour must be made to adjust a person in a post where he could suitably discharge his duties, protecting his last drawn salary. Furthermore, during the course of hearing, the learned counsel for the petitioner placed on record a copy of the order dated 12th December, 2006, vide which different members of the Force who were medically decategorised were absorbed in the alternative staff employment according to their status.

The contents of the said letter read as under:

RPF, "Office of the Sr. Divl.
Security Commissioner,
Mumbai Central.

Date: 12.12.2006

MEMORANDUM

Sub: Medically decategorised staff – absorption the staff in alternative employment.

Ref: CSC/CCG's letter No. SFE 47/3/2 dt. 08.12.06.

In terms of HQ/CCG letter referred above, CSC/CCG has permitted to spare and posting of the following staff to alternative employment for the category and division/station mentioned against their names.

I) Shri Pavan Kumar Sharma	SIPF/PLG
CBC/CLC/CGC	
II) Shri Chandrabhan Pandey	H/C/BCT
Sr.ACC/ALC/AGC	
III) Shri Krishna Dixit	H/C C.E.Coy Sr.ACC/ALC/AGC
IV) Shri Eknath Mali	Const.BCT/Post Jr.Clerk/HQ/CCG
V) Shri Nitin Kangane	Const. BDTs Jr.Clerk/HQ/CCG
VI) Shri Sandip Ahire	Const. DDR Jr.Clerk/BCT Divn.
VII) Shri P. Balaswami	Const.PDGR Jr.ClerkADI/Divn.

Sr. No. 1 to 3 should be spared and directed to report to DRM (E) BCT and Sr. No.4 to be spared to their respective posting on the AN of 12/12/06 and compliance be reported.

Sd/-
Sr. DSC/BCT."

5. As is seen from the above letter, there were at least four constables who were appointed as Junior Clerks and accommodated in the alternative employment. The Supreme Court in the case of *Kunal Singh* (supra), while considering the provisions of the Act, held as under:

“ Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits, if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.”

6. It is not in dispute that in the present case the petitioner was a member of the Railway Protection Force and served for a considerable time in that capacity and was medically decategorised because of the medical report. It is not even averred in the affidavit filed on behalf of the respondents that the case of the petitioner was duly considered and no suitable alternative employment was available for the petitioner and, therefore, for his own benefit was put on a lower scale. It is expected of

the employers' to examine the request of a disabled person and not add to his misery by keeping the request pending for a considerable time. The plea of delay and laches would hardly justify denial of reliefs to the petitioner. The application for review of the order was made to the respondents in the year 1999, which was rejected on 15th March, 2000, against which an appeal was filed on 12th April, 2000, which has not been disposed of till today. The respondents need to look into their own conduct rather than blaming the petitioner for approaching the Court after lapse of considerable time.

7. For the reasons aforesaid, we allow this writ petition partially and direct the respondents to consider the request of the petitioner for appointment in the appropriate scale as an alternative employment in the light of the observations made by us in this judgment. Parties are directed to bear their own costs.

CHIEF JUSTICE

S. C. DHARMADHIKARI, J.